IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 447 of 2005
With
CRIMINAL APPEAL No. 448 of 2005
With
CRIMINAL APPEAL No. 450 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE STATE OF GUJARAT
Versus
MUKESH @ RINKU HUKAMSINH CHAUHAN

Appearance in CR.A. No. 447 of 2005 :
MR IM PANDYA APP for Appellant
MR SUDHANSHU PATEL FOR MR HIMANSHU K PATEL for Respondent

Appearance in CR. A. N. 448 of 2005

MR. IM PANDYA APP for Appellant

MR. M.B. TIWARI for Respondents

Appearance in CR.A. No. 450 of 2005

MR. IM PANDYA APP for Appellant

MR. SUDHANSHU PATEL for Respondent

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 01/05/2007

COMMON ORAL JUDGMENT :

(Per : HONOURABLE MR.JUSTICE J.R.VORA)

1 The above said all the three criminal appeals are arising from the common judgment and order delivered by learned Additional Sessions Judge, Court No.5, City of Ahmedabad, on 2nd of August, 2004, in Sessions Case No. 246 of 2003, 247 of 2003 and 23 of 2004. All the four accused in said three Sessions Cases were charged with the offences punishable under Sections 143, 147, 148 to read with Section 302 and 149 as well under Section 294 to read with Section 149 and under Section 307 to read with Section 149 of the Indian Penal Code. They were also charged for the offence punishable under Section 25(1)(b)(a) to read with Section 27 of the Indian Arms Act as well as for the offence punishable under Section 135 (1) of the Bombay Police Act. Vide above said judgment and order, in all, four accused of said three Sessions Cases came to be acquitted of all the charges levelled against each of the accused by the Trial Judge in each of the three Sessions Cases and, hence, these three Appeals by the State, in each

separate Sessions Cases under Section 378 of the Code of Criminal Procedure.

2 All the three Sessions Cases mentioned above have arisen from the same Crime Register No. I-81/2002, registered before Amraiwadi Police Station. All the four accused of above said three cases applied before the Trial Court to have a common trial and, therefore, all the three Sessions Cases were tried together by the Trial Court.

3 According to the prosecution case, Rajeshkumar Rambahadursinh Rajput, resident of Ambalal Chali, Jagadish Nagar, Amraiwadi, Ahmedabad, was doing business of electrical goods. He was with Nagendrasingh Naransing Chauhan at his residence situated in Babulal Chali on 16th of February 2002. At about 8.00 to 8.30 p.m. accused Mukesh @ Rinku Chauhan of Ajay Tenement and accused Jayjitsinh Lahersinh as well as accused Rohit @ Fauji Surajbhai Chauhan, residents of Ramol, Janatanagar, came to him and inquired about the dispute taken place between them and one Anand Marwadi, a week before. They were excited and started beating and abusing complainant Rajeshkumar and Nagendrasingh. At that time, these three accused threatened complainant and then they went away.

Thereafter, one Manoj @ Taklu Tribhovansing Rajput came to complainant Rajeshkumar, to whom complainant narrated the earlier incident. Manoj suggested to go to KC Tea Stall at Hatkeshwar Circle for taking tea and, therefore, complainant Rajeshkumar, Manoj and Nagendrasingh went to Hatkeshwar Circle on motor cycle of Manoj. After giving orders for tea, they were standing near the tea stall in open space and were talking amongst themselves. At that time, at about 8.45 p.m. one Maruti Fronty Car, bearing No. 8200 came and five persons i.e. accused Mukesh @ Rinku Hukamsinh Chauhan, accused Jayjit Sinh @ Jaydip Lahership Chauhan, accused Ghansyam Banvarilal Prajapati and accused Rohit @ Fauji Surajbhai Chuahan and one Bablu @ Kanchido Gupta (not accused in any of the three cases), got down from the said maruti car and reached to these three friends standing near tea stall. They threatened complainant and his friends that why they three persons were siding Anand Marwadi. Complainant Rajeshkumar said that the accused had beaten Anand Marwadi on false pretext. The accused thereafter were excited and started giving abuses. Accused Mukesh @ Rinku and accused Jayit Sinh took out country revolvers from their pockets. Accused Rohit @ Fauji also took out revolver while accused Ghansyam and other person Bablu, both had pen knives in their hands. Accused Jayjit Sinh fired one shot near the temple of Manoj @ Taklu. Bablu and accused Ghansyam had

inflicted blows of pen knives on Nagendrasinh frequently. Complainant Rajeshkumar intervened, and on his intervention, accused Mukesh @ Rinku and accused Rohit @ Fauji fired rounds from their country made revolvers. Those rounds were struck to complainant Rajeshkumar , one on lips on right side and one below chin. Accused also fired other rounds of revolver thereafter. There was commotion and shouting and crowd was gathered and, therefore, all these five persons ran away from the said place. Manoj @ Taklu was seriously injured and was bleeding. While complainant Rajeshkumar as well as Nagendra were also injured. The persons gathered there, took all these three persons to L.G. Hospital in rickshaw. Rajeshkumar was admitted in Plastic Surgery Ward while Nagendra was admitted to Trauma Ward. On reaching at L.G. Hospital, Manoj @ Taklu was declared dead by Doctor. The complaint of this incident was given by Rajeshkumar to Police Inspector Mr. P.J. Trivedi of Amraiwadi Police Station at the Hospital and the said complaint was sent to Amraiwadi Police Station, where PSO recorded the complaint and registered the offence. The investigation thereafter was handed over to Police Inspector, P.J. Trivedi, who after investigation, submitted first charge sheet in the court below against accused Ghansyam Banvarilal Prajapati and accused Rohit @ Fauji Surajbhai Chauhan, and that case was committed and was numbered as Sessions Case No. 246 of 2003, in

which the remaining accused were shown as absconding. Thereafter, accused Jayjit Singh @ Jaydip Lahersinh Chauhan was arrested on 21st of March, 2003 and supplementary charge sheet was submitted against him in the Court of Magistrate and case being committed, the said case was registered as Sessions Case No. 247 of 2003. On 25th of October, 2003, accused Mukesh @ Rinku Hukamsinh Chauhan was arrested and a charge sheet was submitted against him and case was committed which was registered as Sessions Case No. 23 of 2004. Thus, all these three Sessions Cases were arising from the same crime registered and were heard and tried together.

4 Learned Trial Judge framed charges against all the four accused on 12th of February, 2004, vide Exhibit-1 for the above said offences, and all the four accused pleaded not guilty. Prosecution examined as many as 15 witnesses and produced on record bulky documentary evidence. On evidence of prosecution being over, statements of accused were recorded by Trial Judge under Section 313 of the Code of Criminal Procedure, in which denying the case in toto, accused stated that they were innocent and they were falsely involved in this prosecution. The learned Trial Judge thereafter heard learned APP and learned counsels for the defence for each of the case, and thereafter came to the above conclusion of acquittal of all the four

accused of three Sessions Cases, from all the charged levelled, vide judgment and order referred to above and, hence, these three Appeals by the State against the order of acquittal.

5 Since all these three Appeals have arisen from the common judgment and order, as aforesaid, these Appeals were heard together.

6 In all these three Criminal Appeals, Leave to Appeal is granted and all these three Criminal Appeals are Admitted. In Criminal Appeal No. 447 of 2005, learned Advocate Mr. Sudhanshu Patel for learned Advocate Mr. Himanshu Patel for respondent Mukesh @ Rinku Hukamsinh Chauhan, accused of Sessions Case No. 23 of 2004, waives service; in Criminal Appeal No. 448 of 2005, learned Advocate Mr. M.B. Tiwari waives for accused of Sessions Case No. 247 of 2003 Jayjit Singh @ Jaydip Lahersinh Chauhan, who is respondent in this Appeal and in Criminal Appeal No. 450 of 2005, learned Advocate Mr. Sudhanshu Patel waives for respondents Ghansyam Banvarilal Prajapati and Rohit @ Fauji Surajbhai Chauhan and accused of Sessions Case No. 246 of 2003. Learned APP Mr. I.M. Pandya for the appellant – State as well as learned Advocates for the respondents in all the three Appeals have requested this Court to hear these three Appeals finally as the Record and Proceedings is received from the

Trial Court and extra copies of the evidence and documents were prepared by them to assist the Court. Having regard to the facts and circumstances of this case, the request made by learned Counsels is granted and all the three Appeals are heard finally.

7 In respect of all the three Appeals, on behalf of the State, learned APP Mr. I.M.Pandya was heard while learned Advocate Mr. S.S. Sudhanshu Patel in Criminal Appeal Nos. 447/2005 and 450 of 2005 on behalf of respondents was heard while learned Advocate Mr. M.B. Tiwari was heard for the respondent in Criminal Appeal No. 448 of 2005.

8 These being Appeals against the acquittal and, hence, as per the law established, interference in acquittal order, could be made by the High Court when it is found that the judgment and order impugned and the reasons given by the Trial Court are based upon against the weight of evidence and reasons are so perverse that would not stand to reason. This Court has ample power even in Appeal against acquittal to re-appreciate the evidence and come to its own finding. The judgment and order of acquittal should not lightly be interferred with even if this Court reaches to different finding than reached by the Trial Court, unless the reasons given by the Trial Court appears to be

perverse. To interfere in the judgment and order of acquittal, therefore, it would be necessary to dislodge the reasons of acquittal recorded by the Trial Court.

9 We have carefully gone through the record and proceedings and the contentions raised. We have considered thoroughly the evidence recorded and all circumstances of the case. We have carefully scrutinized all the vital features of the case and the reasonable probabilities arising out of the circumstances of the case.

10 Before coming to the conclusion, it is necessary first to scrutinize the evidence of the prosecution as tendered by it. The star witnesses of the prosecution case are: (1) PW-6 Complainant Rajeshkumar Rambahadursinh Rajput, who is injured eye witness according to prosecution case, who is examined at Exhibit-26 and (2) injured eye witness PW-10 Nagendrasingh Naransingh Chauhan, examined at Exhibit-35. According to prosecution case, these two were not only eye witnesses, but were injured witnesses. They were taken in L.G. Hospital and their injuries were proved by medical evidence. However, in respect of death of Manoj @ Taklu and in respect of their injuries, none of these two star witnesses supported the prosecution case. On the contrary, both the witnesses stated before the Trial Court

in their depositions that, at the time of the incident on 16th of February, 2002, some four/five persons got down from a car. The witnesses were taking tea and they did not pay attention towards these persons. There was a group of 200 to 250 persons. Out of said group, somebody fired towards deceased Manoj @ Taklu, but they did not know who actually fired towards Manoj @ Taklu. They specifically stated that none of the four accused then present in the court had fired towards deceased Manoj @ Taklu. Their injuries were admitted by the witnesses, but in respect of injuries on each witness, each witness stated that though they had received the injuries, but they did not identify the person who inflicted injuries. About the complaint, PW-6 complainant Rajeshkumar Rambahadursinh Rajput stated that though police had inquired from him about the incident and he had signed one paper but he denied the contents of the complaint. However, both these witnesses who were star witnesses turned hostile and did not support the prosecution case. Even the complainant is not supporting his complaint, which is produced at Exhibit-15. Though the contents of the complaint are proved by the evidence of PW-15 Mr. Trivedi, examined at Exhibit-49, but since these two witnesses have not supported the incident, there is no importance of the evidence of the Investigating Officer.

10 PW - 13 Dr. Ketan Hiralal Parmar is examined at Exhibit – 43. He had examined the complainant on 16th of February, 2002, as he was on duty as Medical Officer in LG Hospital, Ahmedabad. In history, the patient had stated that he was injured by gun shot injury and the gun was fired by accused Jayjit Singh @ Jaydip Lahersinh Chauhan. PW-13, Dr. Ketan Hiralal Parmar deposed the injuries in respect of complainant and certificate in this respect is produced at Exhibit - 44.

11 PW-1 Balubhai Dhanjibhai Diwani is examined at Exhibit-14 and he was serving as CMO, LG Hospital, on 16th of February, 2002 and he had examined Manoj @ Taklu (deceased) and he noticed the injuries on the body of the patient, for which he submitted on record a Certificate at Exhibit-15. Exhibit-16 are the case papers in respect of deceased Manoj @ Taklu.

12 PW-2 Kanaiyalal Jagannath Agrawal is examined at Exhibit-18 and he was panch of panchnama of scene of offence, but he has not supported the prosecution case and has been declared hostile.

13 PW-3 Rajnikant Shivabhai Parmar, examined at Exhibit-21 is panch of discovery panchnama, by which accused Rohit @ Fauji

Surajbhai Chauhan, discovered one country revolver and bullet and one used bullet from House No.440 situated at Janatanagar, but this panch has also not supported the prosecution case and the panchnama.

14 PW-4 Dharmendra Shankarlal Patel, examined at Exhibit -22 is also panch of panchnama in respect of discovery made by accused Rohit @ Fauji Surajbhai Chauhan, but he has also not supported the prosecution case or the said panchnama of discovery.

15 PW-5 Nileshkumar Ramdhas Khatik is examined at Exhibit -24. He is panch of discovery panchnama in respect of accused Ghansyam Banvarilal Prajapati and he denied that a preliminary panchnama was drawn on disclosure statement of the accused Ghansyam Banvarilal Prajapati, and at his instance, in government vehicle, accused Ghansyam Banvarilal Prajapati led panchas and police near Dwarakadishnagar Gopalnagar and from his house discovered one rampuri knife.

16 PW-7 Dr. Jayeshkumar Ishwarbhai Mistri is examined at Exhibit-28 and according to him he was serving as Resident Doctor at LG Hospital in 2002 to 2003 and on 16th of February, 2002, one patient Nagendrasingh Naransinh was brought to him and he had noticed

injuries on his body which he deposed and he also produced on record the certificate in this regard, which is produced at Exhibit-29.

17 PW - 8 Hemchandran Kurubann Tiyar is examined at Exhibit-30 and he is owner of KC Tea Stall where this incident took place. According to the prosecution case, he was an eye witness of the incident, but he denied to have noticed the incident and stated that on the day of the incident, he was inside his hotel and he found that people were running helter – shelter. He did not see any of the accused on the spot nor he witnessed that any of the accused fired rounds from revolvers or inflicted injuries on any of the three injured. He was declared hostile by the prosecution and he was confronted with his police statement. According to prosecution case, he also was an eye witness.

18 PW-9 T.P. Rajan Chatu Tiyar, Exhibit-31, was serving as a Cashier of said KC Tea Stall and he is examined because according to prosecution case he was eye witness and was serving as a Cashier at KC Tea Stall at the time of incident. He stated that he had not witnessed the incident. According to the prosecution case, he was also an eye witness of the incident, but the witness stated that, he was sitting in the corner of the hotel and he did not witness any person firing rounds from

the revolvers or inflicting injuries by knife. He has been declared hostile by the prosecution was confronted with his police statement.

19 PW. 11 Premadevi Tribhovansinh Rajput is examined at Exhibit-36. She happened to be mother of deceased Manoj @ Taklu. As per the prosecution case, she was also an eye witness, but she did not support the prosecution case. She stated that on 16th of February, 2002, around 8.00 p.m. she was at her house. She did not notice any incident. She did not know who caused injury to her son. Even she did not hear that the accused had caused injuries to her son. She was also confronted with her police statement.

20 Inquest panchnama in respect of dead body of deceased Manoj @Taklu is produced at Exhibit-37 and panchnama in respect of seizure of the cloth of deceased is produced at Exhibit-38.

21 PW - 12 Vinayakrav Vasudev Patil is examined at Exhibit - 40. He was serving as a Professor in Forensic Science Laboratory Department in Civil Hospital. He conducted postmortem on the dead body of deceased Manoj @ Taklu on 17th of February, 2002. He noted external and internal injuries on the body and stated that all the injuries were antimortem and were sufficient in ordinary course

of nature to cause death. According to him, cause of death was due to shock and hemorrhage on account of gun shot injuries in the brain of the deceased. Postmortem Note is produced at Exhibit-41.

22 PW-14 Bhagvat Jopa Patil is examined at Exhibit-47. According to him, on 16th of February, 2002, he was serving as Police Head Constable at Amraiwadi Police Station and was In-charge of Police Station as PSO. At about 21.00 hours, he received one public telephone that firing had taken place near Tea Stall named as KC Tea Stall. He informed Police Inspector Mr. P.J. Trivedi and Mr. Trivedi immediately rushed to KC Teach Stall at 20.15 hours. He received a complaint as recorded by Mr. Trivedi, which he registered in Station Diary and had prepared First Information Report, which he identified. Thereafter, at 22.15 hours, he also received information from LG Hospital that all the three injured were admitted to LG Hospital and had received injuries in a quarrel. The names of the accused were also informed to him.

23 PW-15, Exhibit-49 Pareshkumar Jawaharnath Trivedi is Investigating Officer who investigated the offence, recorded the statements of the witnesses, draw the panchanamas and had submitted the charge sheets.

24 This is all the oral evidence of the prosecution. Panchnama of scene of offence is produced at Exhibit-49; discovery panchnama in respect of accused Ghansyam Banvarlal Prajapati is produced at Exhibit.54; the map of scene of offence is produced at Exhibit-55; Notification under the Bombay Police Act is produced at Exhibit-56 and vide Exhibit-57 muddamal forwarding letter to Forensic Science Laboratory is produced; vide Exhibit-60 and Exhibits 62 to 67 papers in respect of Forensic Science Laboratory is produced and Analytical result of Forensic Science Laboratory in respect of muddamal is produced at Exhibit-72 and at Exhibit-73. This is all the evidence of the prosecution.

25 From the above evidence, it clearly appears that, none of the witnesses supported the prosecution case in any manner. Even the injured eye witnesses have also not supported the prosecution case. We have found that the Trial Court inquired and ascertained from each witness whether on account of any threat or for any other reason, each witness had turned hostile. But each witness denied that he was threatened for not supporting the prosecution case. The prosecution case miserably failed to establish the guilt of the accused through ocular evidence as well as other evidence like discovery panchnamas etc. It appears that the disclosure statement made before the panchas could

not be proved properly by the prosecution through the police witnesses and that evidence is not also useful to the prosecution. The learned Trial Judge, therefore, acquitted all the accused in those three Sessions Cases because the learned Trial Judge came to the conclusion that there was no iota of evidence to connect the accused with the crime as none of the witnesses supported the prosecution case. We do not see any reason to take a different view than already taken by the Trial Judge. We have carefully gone through the evidence as aforesaid and have scanned all the circumstances arising out of the case. On our own independent assessment of the evidence, we also come to the conclusion that on account of no evidence at all to connect the accused with the crime, none of the accused can be convicted for the offences charged against them. We do not find, therefore, the judgment and order impugned exceptionable to interfere in these three Criminal Appeals filed against the acquittal. Hence, the following order :

"For the above stated reasons, Criminal Appeal No. 447 of 2005, Criminal Appeal No. 447 of 2005 and Criminal Appeal No. 450 of 2005 all the three Appeals stand dismissed."

(J. R. VORA, J.) **(BANKIM .N. MEHTA, J.)**

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